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OCT 13 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 13, 1998

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Carriage of the Transmissions of Digital Television Broadcast Stations
CS Docket No. 98-120

Dear Ms. Salas:

Enclosed for filing on behalf of Granite Broadcasting Corporation ("Granite") are an original and four (4) copies of comments filed in the above-referenced rulemaking proceeding. Please direct any comments or questions on this matter to the undersigned.

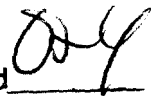
Very truly yours,



Tom W. Davidson, Esq.

Enclosures

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C 20554**

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OCT 13 1998

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OFFICE OF THE SECRETARY

In the Matter of)	
)	
Carriage of the Transmissions of)	
Digital Television Broadcast Stations)	CS Docket No. 98-120
)	
Amendments to Part 76)	
of the Commission's Rules)	

To: The Commission

COMMENTS OF GRANITE BROADCASTING CORPORATION

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SUMMARY

The Federal Communications Commission (“FCC” or “Commission”) has adopted rules that require the nation’s television stations to convert their transmissions from an analog to a digital format. To ensure the success of this transition and the necessary distribution of these new digital television (“DTV”) signals, Granite Broadcasting Corporation (“Granite”) urges the Federal Communications Commission (“FCC” or “Commission”) to adopt rules requiring cable system operators to carry both the digital and analog signals of all eligible local television stations. This obligation should require each cable operator to use up to one-third of the channel capacity in its system for this purpose. In addition, cable systems must be required to “pass through” the entirety of all local broadcast signals, without material degradation, as part of their basic service tier of programming. Finally, to assist in viewer identification and use of the new DTV signals, each television station’s DTV and analog signal should receive channel assignments that can be readily located by viewers.

In originally adopting the must carry requirement, Congress sought to ensure that potentially anti-competitive conduct by cable systems could not reduce the availability of local television signals. These rules must be expanded to provide similar and explicit protection for DTV transmissions during the upcoming DTV transition period. In light of the significant financial, technical and logistical investments that the FCC has asked broadcasters, manufacturers, and consumers to make in the DTV transition, the FCC also must take the actions necessary to ensure the wide dissemination and availability of DTV signals. For these reasons, Granite urges the Commission to adopt the changes outlined in these comments.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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Carriage of the Transmissions of)	
Digital Television Broadcast Stations)	CS Docket No. 98-120
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Amendments to Part 76)	
of the Commission's Rules)	

To: The Commission

**COMMENTS OF GRANITE BROADCASTING
CORPORATION**

The Federal Communications Commission ("FCC" or "Commission") has initiated the above-captioned proceeding ("NPRM")¹ to determine the extent to which cable operators will be required to participate in the coming transition from analog to digital television ("DTV"). Specifically, the Commission has requested comment on the whether the must carry obligations currently borne by cable operators should be applied to require mandatory carriage of the digital signals that television stations will broadcast. As set forth below, the answer to this question is unabashedly yes. Thus, Granite Broadcasting Corporation ("Granite"),² the largest minority controlled owner of television stations in the U.S., urges the Commission to impose DTV must carry requirements on cable operators in accordance with these comments.

¹ *In the Matter of Carriage of the Transmissions of Digital Television Broadcast Stations*, CS Docket 98-120, released July 10, 1998.

² Directly and through subsidiaries, Granite owns and operates the following television stations: KNTV(TV), San Jose, California; KBWB(TV), San Francisco, California; WTVH-TV, Syracuse, New York; KSEE(TV), Fresno, California; WPTA(TV), Fort Wayne, Indiana; WEEK-TV, Peoria, Illinois; KBJR-TV, Duluth, Minnesota; KEYE, Austin, Texas; WKBW, Buffalo, New York; and WDWB(TV), Detroit, Michigan.

I. INTRODUCTION

The Commission's DTV regulations require more than 1,700 television stations to convert their operations into a digital format.³ There are numerous and undeniable public benefits that will result, over the long run, from the current investments in this DTV transition. However, over the next eight years, the implementation of DTV will impose numerous technical and logistical challenges and massive financial costs on broadcasters. In light of the substantial time and money that broadcasters, as well as the FCC and other industries are investing in this transition, it is imperative that the Commission guarantee the universal availability of these new, higher quality digital television signals. Permitting cable operators to unilaterally choose which of the DTV signals they will carry during the transition to digital service would seriously undermine the continued availability of free, over the air television broadcast services.

Accordingly, Granite urges the Commission to apply the current must carry requirements to the new digital television signals, and thereby insure the maximum availability and distribution of this new advanced type of programming. Specifically, the FCC should require mandatory cable carriage of all eligible local commercial DTV signals, in their entirety, as they come on the air under the Commission's staggered schedule until the analog spectrum is returned. This obligation must require cable operators to use up to one-third of their capacity for carriage of all eligible DTV signals. Furthermore, cable systems must be required to "pass through" the entirety of all local broadcast signals, without material degradation, as part of their basic service tier of programming. Finally, to assist in viewer identification and use of the new DTV signals, Granite believes that each

³ See *Fifth Report and Order*, MM Docket 87-268, 12 F.C.C. Rcd 12809 (1997)(adopting rules for the transition from analog to digital television broadcasting); *Sixth Report and Order* in MM Docket 87-268, 12 F.C.C. Rcd 14588 (1997); *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket 87-268, 13 F.C.C. Rcd 7418 (adopting final DTV allotments, procedures for assigning DTV frequencies and plans for spectrum recovery).

television station's digital and analog signals should receive channel assignments that can be readily located by viewers.

II. DURING THE TRANSITION TO DIGITAL TELEVISION, CABLE OPERATORS MUST BE REQUIRED TO CARRY BOTH THE ANALOG AND DIGITAL SIGNALS OF ALL ELIGIBLE COMMERCIAL TELEVISION STATIONS AS SOON AS THESE SIGNALS BECOME AVAILABLE

Over the next eight years, television broadcasters will transition from an analog to a digital broadcast environment. The FCC seeks comment on seven must carry DTV options for this transition period. The Commission's "Immediate Carriage" option would require all cable systems, regardless of channel capacity constraints to carry, in addition to the existing analog television stations, all digital commercial television stations, up to the one-third capacity limit, and any additional digital noncommercial stations within the limits currently set forth in the Communications Act of 1934, as amended (the "Act").⁴ Adoption of this proposal would ensure that each eligible station's digital signal received identical carriage rights as the station's analog signal. Granite urges the adoption of this digital must carry option because, for the reasons explained below, this proposal would best accomplish the goals and purposes underlying the must carry rule.

A. Adoption of A Must Carry Obligation for DTV Signals is Appropriate Since it Would Further the Congressional Goals Underlying the Rule

Congress imposed its must carry requirement on cable system operators to serve three important governmental interests: (1) to preserve the benefits of free, over the air local broadcast television; (2) to promote the widespread dissemination of information from a multiplicity of sources; and (3) to promote fair competition in the television programming market.⁵ The transition

⁴ NPRM at ¶ 41. See also 47 U.S.C. § 534.

⁵ *Turner Broadcasting System, Inc. v. FCC*, 1997 U.S. Lexis 2078 at *17 (1997). The Supreme Court has upheld the validity of these goals and determined that the must carry rules further these goals.

to digital television does not diminish the importance of achieving these goals. For example, in upholding the validity of the must carry rules, the Supreme Court observed that “despite the growing importance of cable television and alternative technologies, broadcasting is demonstrably a principle source of information and entertainment for a great part of the Nation’s population.”⁶ However, only forty percent of American households continue to rely on over the air signals for television programming.⁷ Approximately 60 percent of the U.S. public subscribes to cable and receives its local television programming in this manner. Cable operators therefore have come to serve as a “bottleneck” or “gatekeeper” controlling public access to local television programming.

Cable operators will have an even greater gatekeeper role in the transition to digital television. The replication areas of a broadcast station’s over the air DTV service in certain instances will not necessarily equal that of its analog TV (or “NTSC”) service. As a result, viewers who rely solely on over the air reception of DTV signals may find they have reduced access to local broadcast programming. Thus, mandatory cable carriage of the DTV signal is necessary to ensure viewers have continued access to all available local broadcast programming during the transition period.

In adopting the mandatory carriage provisions, Congress concluded that the economic viability of local broadcast television and its ability to originate quality local programming would be jeopardized if cable systems had the right to refuse to carry particular local broadcast signals. These same concerns about the viability of the television industry also are at issue in the transition to a digital environment. Each television broadcaster will be required to bear the significant technical, financial, and logistical costs associated with the DTV transition. Collectively, broadcasters will

⁶ *Id.*

⁷ *Id.*

spend hundreds of millions of dollars to accomplish this task.⁸ The costs of bringing these new services to the public will be borne by individual commercial television broadcasters and the Commission has a corresponding responsibility to guarantee signal carriage to each such broadcaster. Without the requirement to carry all DTV commercial signals, cable operators would be free to drop smaller, local stations in favor of cable networks.⁹ If cable operators were permitted to cherry pick among DTV signals in this manner, small or independent stations, upon which the financial burden of the DTV transition weighs most heavily, would have no assurance that their DTV signal will actually be received by a critical mass of viewers. For example, Granite's stations, WDWB and KBWB, which are affiliates of the WB Network, may be vulnerable to being dropped if a DTV must carry obligation is not imposed on cable systems. It simply is not feasible to impose the burden of DTV transition on a commercial television licensee without guaranteeing that its signal will actually reach a significant portion of the public. The absence of a DTV must carry requirement inherently limits the size of the audience that will receive DTV broadcast signals. This limitation may well undermine the economic viability of numerous television stations and reduce their opportunities to fully and successfully compete in the digital environment.

The Commission has stated its intent to let the various industries and the market make many of the technical and business choices associated with this transition to DTV.¹⁰ The Commission must acknowledge, however, that the conversion to digital television is a requirement that the FCC has

⁸ Sinclair Broadcasting Group, Inc. for example, has announced that the DTV conversion for its stations will cost between \$300 million and \$600 million. *See First Sony DTV Set Due by Thanksgiving at \$8,999*, Audio Week, September 21, 1998 ("Sony TV").

⁹ This result is not merely a hypothetical possibility given cable television system capacity limits and the fact that many cable operators and broadcast owners have financial interests in cable networks.

¹⁰ *Kennard Urges Support for Digital Television*, Multichannel News, September 21, 1998, available in LEXIS, NEWS Library.

imposed on broadcasters in an effort to upgrade the quality of broadcasting available to consumers, and to use spectrum most efficiently. Many of the specific transition requirements were opposed by the industry. In light of the FCC's imposition of its strict DTV regulatory transition requirements, the Commission also should grant broadcasters DTV must carry rights so that they can enter the digital environment with a chance of competing on a level playing field. In light of the investment broadcasters are making in this process, it would not be fair for the Commission to simply impose a regulatory requirement, then to step back to let cable carriers determine which DTV stations will receive cable carriage.

Consumers and retailers also are being asked to make significant adjustments and investments to accomplish the DTV transition. For example, to receive DTV transmissions, consumers will have to purchase new television sets. The first generation of DTV sets are scheduled to become available in the late fall of this year, and will cost over \$8,000.¹¹ Although retailers are confident that consumers will embrace the digital revolution, this enthusiasm will certainly not materialize unless consumers are confident that their new equipment will be able to receive digital programming that includes local broadcast signals.¹² Requiring the adoption of DTV technology without ensuring the availability to consumers of desired local broadcast programming clearly would undermine the

¹¹ *See Sony TV.*

¹² A recent consumer survey commissioned by the Harris Corporation found that more than half of all respondents thought that cable providers should carry HDTV programming of local network affiliates. More than fifty percent said that they would be willing to give up some of their present cable channels for HDTV's superior sound and pictures. Seventy five percent of respondents said that they watched less than a third of the channels they currently receive. More than seventy five percent watch ten or fewer channels per week. These findings contradict the repeated assertions of the cable operators that viewers are primarily interested in increasing the quantity of channels that they receive. *See Harris Customer Survey of the HDTV Market*, BBC Summary of World Broadcasts, July 17, 1998, *available in* LEXIS Library.

effectiveness of the upcoming transition. This fact has already been noted by the retail industry.¹³

In light of these various concerns and goals, it is apparent that a mandatory and immediate must carry obligation for eligible commercial DTV signals is necessary.

B. Imposition of A Digital Must Carry Requirement Will Not Create an Undue Burden on Cable Systems

Requiring cable systems to devote up to one-third of their aggregate number of usable, activated channels to the carriage of DTV signals should not prove to be an excessive burden. First of all, digital compression techniques will greatly expand the amount of channel space available to cable systems. For example, the National Association of Broadcasters ("NAB") has suggested that one 6 MHz cable channel could carry the equivalent of at least eight NTSC/standard definition television ("SDTV") services or two high definition television ("HDTV") services, or a compressed NTSC channel and four multicast SDTV channels.¹⁴ Second, in light of the significant differences between analog and digital transmissions and the enhancements in the quality of video and audio programming, Granite's proposed dual signal carriage requirement would not result in the carriage of duplicative programming. It is precisely because of differences between digital and analog programming that consumers will be willing to pay upwards of \$8,000 for a digital television set. Similarly, it is because of the new programming opportunities associated with these differences that manufacturers and broadcasters are willing to invest hundreds of millions of dollars in this new television transmission method.

In addition, the public interest benefits provided by broadcasters demand application of the must carry rule to digital television signals. Some have questioned whether the increase in local

¹³ See *Sony TV* (noting that consumers will delay purchasing the necessary equipment if there is no strong incentive to buy).

¹⁴ NPRM at ¶ 58, citing comments previously filed by NAB.

programming by cable operators, particularly in news and informational shows, suggests that broadcasters are no longer unique in serving the public interest and therefore no longer merit carriage under the must carry rules. The answer is an emphatic no. The public benefits from the proliferation in the number of news and information sources that are available, and Granite applauds this trend. However, the Commission cannot equate the mere provision of another information source with the various types of public services that are provided on commercial television stations and that broadcasters perform within their local communities. For example, a recent report by the National Association of Broadcasters states that the average television station runs 137 public service announcements per week.¹⁵ Over sixty percent of television stations also run special segments profiling political candidates and their stands on various issues, as well as other political programming.¹⁶ For example, Granite implemented new public service programs for this year's general election in a number of its markets. Thus, Granite gives free air time to candidates for selected political office.¹⁷ Broadcasters also are required to provide an average of three hours per week of educational programming for children. Furthermore, many stations and employees get directly involved in the local community by organizing and participating in fund raising events, serving on the boards of local organizations, and visiting local schools or community events. This

¹⁵ BROADCASTERS BRING COMMUNITY SERVICE HOME, A NATIONAL REPORT ON THE BROADCAST INDUSTRY, National Association of Broadcasters, April 1998. These spots provide important information to the public on issues including AIDS, hunger, drug abuse, violence, voting, and education.

¹⁶ *Id.* at 10.

¹⁷ Specifically, Granite's television stations in New York, California, and Illinois have been giving candidates for the Senate and Governor two minutes of free time a week during the six weeks leading up to the general election. Granite stations also have been providing a similar amount of free time to candidates for Congress in certain of its television markets in these three states. These unedited responses air in and around station newscasts.

local commitment certainly holds true at Granite's stations.¹⁸ Thus, especially in smaller markets, local television stations serve as indispensable sources of communication and organization within their communities. It is entirely appropriate therefore for broadcasters to receive mandatory carriage.

III. CABLE SYSTEMS MUST BE REQUIRED TO "PASS THROUGH" THE ENTIRETY OF ALL LOCAL DIGITAL BROADCAST SIGNALS AS PART OF THEIR BASIC TIER OF SERVICE, AND TO RETAIN THE SAME CHANNEL IDENTITY OF THESE SIGNALS

One of the Commission's stated goals in the DTV transition is to ensure the continued availability of free, over the air television broadcast service.¹⁹ To accomplish this important goal, Granite urges the Commission to retain several other elements of the analog must carry requirement in the digital context. First, Granite urges the Commission to require that cable operators "pass through" the entirety of the local broadcast signal (except subscription services excluded by statute) without "material degradation." In other words, each station's digital programming should be transmitted in its original format so that the public can view the program in the manner intended by the broadcaster. This rule will ensure that HDTV programming originated by broadcasters will always be carried in its HDTV format. Cable operators must not be permitted to unilaterally convert the transmission into another digital format. If cable operators are not required to "pass through" the entire digital signal, the ability of viewers to receive and experience higher quality television

¹⁸ For example, Granite Station KEYE-TV and its employees have participated in fundraisers for the American Cancer Society and local community organizations, such as the Austin Nature Center, and also have worked with local fire and police departments to teach local children about safety. Station KNTV, San Jose, California has fostered relationships with local schools in San Jose through its participation in school career days, fund-raising and athletic events and other activities. Granite's other stations are similarly involved in their communities.

¹⁹ NPRM at ¶ 5.

programming formats will be reduced, and the purpose of this massive transition effort will be undermined.

Second, Granite urges the Commission to require cable systems to carry each qualifying station's analog and digital television signal together on the basic programming tier. In initially adopting the must carry requirement, Congress provided that television signals "shall be provided to every subscriber of a cable system."²⁰ To ensure this result, Congress mandated that signals "shall be viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection."²¹ An identical requirement is necessary in this case to ensure that viewers have maximum accessibility to local DTV signals during the transition period. Since Congress has clearly expressed its intent to incorporate advanced television within the must carry obligation imposed on cable operators, this provision of the current rule also should apply to DTV signals.²² Ubiquitous availability of local DTV signals clearly will not occur if viewers are permitted to access this programming only upon purchasing or accessing additional (or more costly) cable services. Placing the analog and digital signals in separate subscription tiers also will make it more difficult for a viewer to locate the signals of the station it is seeking. Local commercial television stations will lose their unique identity and stand to lose viewership if the digital and analog signals are not paired on the same tier. For this

²⁰ 47 U.S.C § 534(B)(7). *See also* 47 C.F.R. § 76.56 (d)(1) & (2)(1997).

²¹ *Id.*

²² 47 U.S.C § 534(b)(4)(B) states:

[a]t such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards.

reason, Granite opposes any proposals to place DTV signals on a tier separate from the analog signal and with digital cable transmissions.

Third, Granite urges the adoption of a DTV must carry rule that identifies and mandates the permissible cable channels that are available for mandatory carriage of DTV broadcast signals. Such a rule will ensure that these entities are not consigned to remote locations on the cable system.²³ The necessity of preventing detrimental and confusing channel assignments was recognized by Congress in adopting the must carry rule²⁴ and is equally applicable in the digital context. Specific DTV cable channel assignments are necessary to ensure that DTV signals are not assigned to remote or scattered parts of the spectrum where they are unlikely to be discovered easily by consumers.²⁵ Specifically, Granite urges that broadcast stations should be permitted to maintain the same channel number on cable systems as used for digital off-air reception. This approach also will benefit stations by providing them with consistent channel placement among cable systems. In addition, each station's analog and digital signal should be placed on the cable system (or the video program guide) so that viewers can easily locate both signals.²⁶ Congress guaranteed these basic protections in connection

²³ One reason underlying Congress' channel positioning requirement in the must carry rule was to prevent anti-competitive conduct of the cable operator by placing a television station on an undesirable, higher cable channel. This concern also remains valid in the digital context.

²⁴ 47 U.S.C. § 534(b)(6).

²⁵ The current must carry rules recognize the importance of "channel branding." One recent article explains that "for most television stations, the channel number is as important to it as name and trademark are to another company." See *Television Stations Fear for Their Channel Brand as Choices Proliferate in the Digital Age*, New York Times, December 29, 1997 at D9.

²⁶ For example, various industry groups are working with receiver manufacturers to develop new tuning formats and on screen program guides that will pair stations' analog and advanced television ("ATV") channels, e.g., Channels 9A and 9B. The Commission's rule should take any such market developments into accounts. See e.g., *New Guides Put More Power In TV Viewers' Hands*, San Francisco Chronicle, August 20, 1998 at E1.

with the mandatory carriage of analog signals.²⁷ The same rights must be accorded to digital signals to avoid causing unnecessary harm to the competitiveness, goodwill, and identity that each station will have to build in its digital channel assignment during the transition period to ensure viewership adequate to its survival.

IV. CONCLUSION

After many years of development and planning, the Commission finally has mandated the transition from analog to digital television. To accomplish this goal on a broad scale and on a timely basis, the FCC has imposed an aggressive build out schedule on commercial broadcast licensees over the next eight years. Stations in the largest markets have made a voluntary commitment to begin digital transmissions within the next few months. These efforts indicate the FCC's dedication to the success of DTV and to the earliest possible provision of universal digital programming to U.S. viewers. The Commission must remain cognizant, however, that the ultimate success of this venture will not depend solely on the commitment and actions of broadcasters. To the contrary, a successful roll out of DTV will require the cooperation of several industries, including manufacturers, retailers, and cable operators, and then finally, the acceptance of consumers. The crucial nail upon which the success of these various industry efforts will hang is the availability of desirable local broadcast programming in a digital format.


Currently, cable is the pipeline through which most local television signals reach American homes. There is every indication that the cable medium will continue to be the primary means of distribution of commercial broadcast television in the digital age. The ultimate success of DTV transition demands that the FCC's regulations take this crucial fact into account and that a must carry TV obligation be adopted. In the absence of such a guarantee, consumers will have no assurance of

²⁷ 47 U.S.C. § 534(b)(6).

access to digital, local broadcast signals during the transition to the digital television age. If this result is permitted to occur, the transition efforts of the FCC, and the investments of broadcasters, manufacturers, and consumers will be significantly, and unacceptably, diminished.

Respectfully submitted,

GRANITE BROADCASTING CORPORATION

By: 
Tom W. Davidson, Esq.
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Date: October 13, 1998

CERTIFICATE OF SERVICE

I, Annamarie Valenti, an employee of Akin, Gump, Strauss, Hauer & Feld, L.L.P., certify that a copy of the foregoing **Comments of Granite Broadcasting Corporation** was served by hand delivery on this 13th of October, 1998, upon the following:

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Washington, D.C. 20554

Commissioner Susan P. Ness
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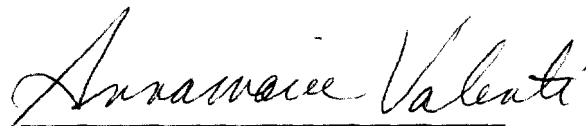
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